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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,752	02/12/2001	Earl T. Crouch	3000-41	8908

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EXAMINER	
SINGH, ARTI R	

ART UNIT	PAPER NUMBER
1771	8

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/781,752	CROUCH ET AL.	
	Examiner	Art Unit	
	Ms. Arti R. Singh	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 February 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 February 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *7* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

- On page 2, line 28 there needs to be a space between the denier size, that is 660 and the word may, please rectify,
- On page 2, lines 31 and 40, Applicant refers to a #, for example 10# per oz per square yard, it is unclear to the Examiner what Applicant is trying to say , please clarify.

Oath/Declaration

2. The oath or declaration is defective because: it does not contain the parent and grandparent data as set forth in the first paragraph of the specification, namely the lineage of 08/536,167 and 09/094170. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1 and 4 recite the limitation, "that the coated fabrics have a tear strength when tested according to ASTM D 1682 in "excess" of that achieved by conventional solvent coated fabrics". What exactly are the meets and bounds of something that is "excess"? Please provide endpoints or numerical clarification as to what determines the comparison. Further, although not required, it is a suggestion of the Examiner that Applicant submit a copy of the ASTM D 1682 standard so that the file is complete. Claims 2, 3 and 5-12 are objected to as being dependent upon a rejected base claims 1 and 4.

5. Further in claims 1 and 4 the phrase "mixtures thereof" or "combinations thereof" are found to be confusing and is unclear to the Examiner as to what is exactly meant here. Is Applicant claiming that the coating is made from a mixture of everything listed? Perhaps the use of proper Markush language would be more appropriate in defining what Applicant really wants. Please clarify.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 5,763,330. Although the conflicting claims are not identical, they are not patentably distinct from each other because they appear to be obvious variants of one another. The airbag fabric as

desired in the instant Application is the coated fabric, or generic as the claims of the patent are drawn to an extrusion coated nylon fabric coated with a linear low density polyethylene plastic having a tear strength when tested against the same ASTM D 1682.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1, 2, 4 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kitamura et al. (USPN 5,336,538) or Sakairi et al. (USPN 3,892,425) or Rodenbach et al. (USPN 3,807,754).

Kitamura et al. disclose an airbag comprising a woven fabric (1) and a polymer covering layer (2) (column 2, lines 45-60). A variety of fibers may be employed in making the woven fabric used by patentee, some of them being; fibers of polyester, polyamide and polyolefin (column 4, lines 40-48). The polymer covering layer (2) may be produced from a polyurethane resin, polyester resin, polyamide resin, or a polyolefin resin, which are only a few of the many listed in column 4, line 56- column 5, line 9.

Sakairi et al. are concerned with the fabrication of an airbag material derived from a knitted fabric; wherein the fabric is coated with an elastomeric coating. Suitable fibrous materials include nylon and polyester. The instant patent exemplifies polyurethane and chlorosulfonated polyethylene as suitable elastomeric coatings.

Rodenbach et al. teach a passive restraint system composite comprising a coated fabric. Suitable fabrics include nylon and polyester, and suitable coating materials include neoprene and urethanes (column 4, lines 6-8 and 52-56). Thus, Applicant's claims 1, 2, 4, 5 and 11 are clearly anticipated if not obvious of the cited references.

Given that the aforesaid references meet each and every chemical and structural requirement set forth in the claims, then it must meet the property limitations of tenacity and tear strength recited that depend from said requirements. In other words, it is reasonable to presume that the invention of Kitamura et al. or Sakairi et al. or Rodenbach et al. would inherently anticipate the physical properties of the present invention, since both inventions are comprised of woven fabrics coated with an elastomeric composition wherein said fabric may be a woven polyamide, polyester or polypropylene.

Since no other structural or chemical features are claimed which may distinguish the present invention from that of Kitamura et al. or Sakairi et al. or Rodenbach et al. inventions, the presently claimed physical properties of tenacity and tear strength are deemed to be inherent to the inventions of Kitamura et al. or Sakairi et al. or Rodenbach et al. The burden is upon Applicant to prove otherwise. Note *In re Fitzgerald 205 USPQ 495*. Without a showing that evidences a difference between the prior art and the present invention, anticipation is proper.

11. Claims 3, 5-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura et al. or Sakairi et al. or Rodenbach et al. as applied to claims 1, 2, 4 and 11 above,

and further in view of Mohammed et al. (USPN 5,507,900). Kitamura et al. or Sakairi et al. or Rodenbach et al. teach what is set forth above but fail to disclose a tie layer. Mohammed et al. teach a method of making a polymer and fabric sheet composite by using a tie layer for bonding the polymer sheet and the fabric together (column 5, lines 39-42). Suitable tie layer resins include acrylic polymer and vinyl acetate copolymers (column 5, line 37 to column 6, line 15). Accordingly, it would have been obvious to a person having skilled in composite art the time the invention was made to have employed the tie layer as taught by Mohammed et al. in any one of the composites of Kitamura et al. or Sakairi et al. or Rodenbach et al., motivated by the reasoned expectation of providing a composite in which the layers are adhered to one another by means of an adhesive or tie layer.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- USPN 5,989,660 to Moriwaki teaches all of Applicant's desired limitations, specifically column 3, lines 20-53. however, the reference does not qualify as prior art.
- US 6,350,709 to Veiga teaches A coated textile fabric is disclosed for manufacturing an air holding device for a vehicle restraint system, including a base woven, knitted or non-woven base textile fabric having a first surface and a second surface. The base textile fabric is completely or partially coated with an adhesive polyurethane to form a first coating layer, the first coating layer being coated with a second composite coating layer. The second composite coating layer is preferably a polyurethane, a polysiloxane, and an epoxy resin, which acts as a filler and adhesion promoter. A third coating layer is formed of a polymeric polyurethane material coated on the second

composite layer, however the date of the reference disqualifies this reference as prior art.

- US 2003/0027474 A1 to HAYES teaches a laminate composite fabric material used in the manufacture of airbags and has at least one thermoplastic coating layer that is pressure laminated to a pretreated fabric via an adhesive. This document does not qualify as prior art because of the date.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti R. Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 7:00am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Ms. Arti Singh
Patent Examiner
Art Unit 1771

ars
February 21, 2003